

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DARRELL MCHONEY,

Petitioner

v.

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CIVIL ACTION NO. 1:05CV105
CRIMINAL NO. 1:04CR48-1
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 18, 2005, pro se petitioner, Darrell McHoney, filed a petition pursuant to 28 U.S.C. § 2255. The petitioner filed a second § 2255 motion on January 20, 2006.¹ On August 24, 2007, United States Magistrate Judge John S. Kaul determined that the petitioner did not clearly explain the facts surrounding his claim that counsel had failed to file a notice of appeal. Accordingly, the Magistrate Judge issued an order directing the petitioner to file a verified affidavit setting forth the facts supporting this ground in the petition. The petitioner was advised to file his affidavit within 20 days and that his failure to do so could result

¹ The petitioner's second 2255 petition raises the same claims as his first petition and is nearly identical to the first petition in all respects. The second petition does not add or delete any claims. Thus, any reference to "the petition" in this order refers to the petition filed on July 18, 2005.

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in an adverse recommendation. Despite this warning, the petitioner has never responded to the order or requested additional time to do so.

On October 31, 2007, Magistrate Judge Kaul issued an Opinion and Report and Recommendation ("R&R") recommending that McHoney's motion be denied and dismissed with prejudice due to the petitioner's failure to assert sufficient grounds.

The Report and Recommendation also specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. No objections were filed.²

Based on petitioner's failure to object, the Court **ADOPTS** the Report and Recommendation in its entirety and, accordingly, **DENIES** the petitioner's Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Dkt. No. 19 in 1:04CR48-1 and Dkt. No. 1 in 1:05CV105). It, therefore, **ORDERS** that McHoney's case be **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court's docket.

² The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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The Clerk is directed to mail a copy of this Order to the pro
se petitioner, certified mail, return receipt requested and to
counsel of record.

Dated: November 13, 2007

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE